

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Airport

AGENDA DATE: September 13, 2011

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780 4793

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign the Lessor's Approval of Assignment of a Butterfield Trail Industrial Park Lease by and between the city of El Paso ("Lessor"), Donald G. Vise (Assignor") and Vise/El Paso Property, LLC. ("Assignee").

BACKGROUND / DISCUSSION:

Donald Vise has been a Butterfield Trail Industrial Park ("BTIP") lessee at #26 Butterfield Trail since Thomas Arndt assigned ownership of leasehold to Vise in December 2007.

The initial term of the Lease is for forty years, terminating on June 30, 2025 and presently generating annual revenues of \$9,308.04 on approximately 55,737 square feet of land. There are 13 3/4 years remaining on the initial lease term, with one – 10 year option. All terms and conditions of Lease are to remain the same.

Vise now desires to assign the current Lease to Vise/El Paso Property, LLC., which in turn, will lease the facility to Phoenix Pump.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A. This is a revenue generating lease.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and among the City of El Paso ("Lessor"); Donald G. Vise ("Assignor"), Vise/El Paso Property, LLC ("Assignee"), Donald G. Vise ("Guarantor") for the following described property:

A portion of Lot 1, Block 10, Butterfield Trail Industrial Park Unit 2, City of El Paso, El Paso County, Texas, which is municipally known and numbered as #26 Butterfield Trail, El Paso, Texas.

ADOPTED this the ____ day of _____ 2011.

THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:



Monica Lombrana, A. A. E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

This Lessor's Approval of Assignment is made this ____ day of _____, 2011, by and among the City of El Paso ("Lessor"), Donald G. Vise ("Assignor"), Vise/El Paso Property, LLC ("Assignee"), and Donald G. Vise ("Guarantor").

WHEREAS, the City of El Paso entered into a Butterfield Trail Industrial Park Lease Agreement ("Lease") with an effective date of July 1, 1985 ("Lease") with Jay F. Stewart and Mike R. Stewart, dba Stewart Enterprises, a Texas General Partnership for the leased premises more fully described below;

WHEREAS, the Lease was assigned to Jay F. Stewart pursuant to a Lessor's Approval of Assignment dated April 27, 2004;

WHEREAS, the Lease was then assigned to Canyon State Oil Company, Inc. pursuant to a Lessor's Approval of Assignment with an effective date of June 1, 2005;

WHEREAS, the Lease was subsequently assigned to the Thomas F. Arndt Trust Agreement originally dated June 1, 2005;

WHEREAS, the Lease was further assigned to Donald G. Vise by a Lessor's Ratification and Approval of Assignments dated December 11, 2007; and

WHEREAS, a request has been received by Lessor to assign the Lease to Vise/El Paso Property, LLC.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. **THE PREMISES.** The Lease covers the following described leased premises:

A portion of Lot 1, Block 10, Butterfield Trail Industrial Park Unit 2, City of El Paso, El Paso County, Texas, being more particularly described in **EXHIBIT A**, attached hereto and made a part hereof, and municipally known and numbered as #26 Butterfield Trail, El Paso, Texas ("Premises").

2. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Assignee on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all

the terms, covenants, and conditions of the Lease. Further, this consent to assignment is expressly contingent upon the full satisfaction of all past rents and other fees due Lessor by Assignor at the time of assignment from Assignor to Assignee, as contemplated herein. Lessor has provided documentation to the parties of all outstanding debts referenced herein. Failure to satisfy all such outstanding obligations shall render this consent as void.

3. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.
4. **GUARANTOR.** Assignor shall be released and discharged from all rights, privileges and obligations under the Lease arising from and after the effective date of the assignment of the Lease and Assignee shall, as of the effective date of the assignment enjoy all rights and privileges and be responsible for satisfying all such obligations the same as if the Lease had originally been executed between Lessor and Assignee. Provided, however, that Donald G. Vise ("Guarantor") individually guarantees payment of rent and other charges or fees due to the Lessor and shall become fully liable for the prompt and complete performance of any and all obligations arising, or to arise, under the Lease.
5. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
6. **ADDRESS FOR NOTICE.** Notices to Assignor and Assignee shall be sufficient if sent by certified mail, postage prepaid, addressed to:

ASSIGNOR: Donald G. Vise
3552 E. Corona Avenue
Phoenix, AZ 85040

ASSIGNEE: Vise/El Paso Property, LLC
Attn: Suzie Graham
3552 E. Corona Avenue
Phoenix, AZ 85040

GUARANTOR: Donald G. Vise
3552 E. Corona Avenue
Phoenix, AZ 85040

7. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignor, Assignee, or Guarantor represent and warrant that

they have the authority legally to bind their respective party, to the provisions of this Lessor's Approval of Assignment.

8. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
9. **EFFECTIVE DATE.** The effective date of this Lessor's Approval of Assignment shall be the date this instrument is authorized by resolution of the City Council of the City of El Paso.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2010,
by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas.** (Lessor)

Notary Public, State of Texas

My Commission Expires:

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNOR: DONALD G. VISE

DLG
Printed Name: Don Vise
Title: Pres

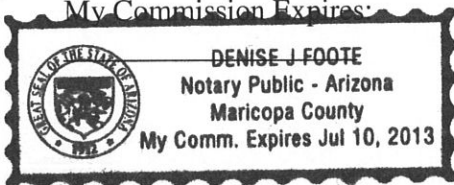
ASSIGNOR'S ACKNOWLEDGMENT

THE STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

This instrument was acknowledged before me on this 24th day of August, 2011,
by **Donald G. Vise** (Assignor).

Denise J. Foote
Notary Public, State of Arizona

My Commission Expires:



(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

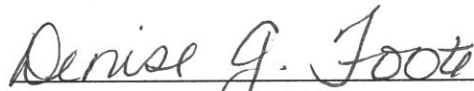
GUARANTOR: DONALD G. VISE


Printed Name: Don Vise

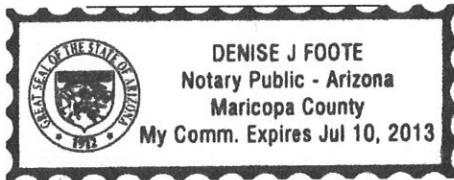
GUARANTOR'S ACKNOWLEDGMENT

THE STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

This instrument was acknowledged before me on this 24th day of August, 2011,
by **Donald G. Vise** (Guarantor).


Notary Public, State of Arizona

My Commission Expires:



PROPERTY DESCRIPTION

1.280 Acres

or

55,737 Square Feet

Being a portion of Lot 1, Block 10, Butterfield Trail Industrial Park, Unit 2, City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a City Monument at the centerline intersection of Butterfield Trail Boulevard (90.00 feet wide) and Butterfield Circle (90.00 feet wide);

THENCE, along the centerline of said Butterfield Trail Boulevard, South 87°54'08" East, a distance of 80.00 feet to a point;

THENCE, South 02°05'52" West, a distance of 45.00 feet to a point in the south right-of-way line of said Butterfield Trail Boulevard and POINT OF BEGINNING for the herein described tract;

THENCE, along said south right-of-way line, South 87°54'08" East, a distance of 165.00 feet to a point for corner;

THENCE, leaving said right-of-way line, South 02°05'52" West, a distance of 280.00 feet to a point for corner;

THENCE, North 87°54'08" West, a distance of 200.00 feet to a point for corner in the easterly right-of-way line of said Butterfield Circle;

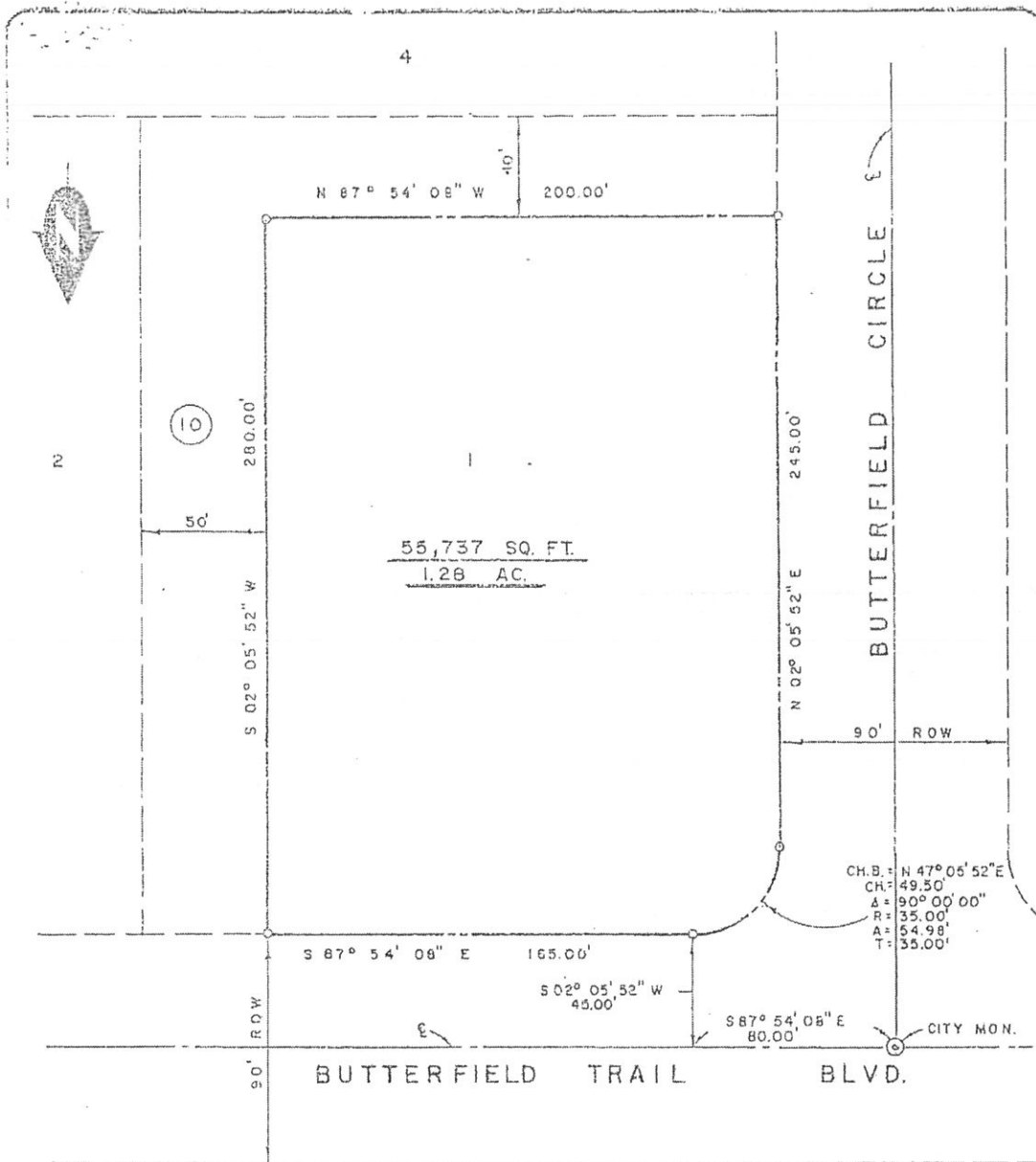
THENCE, along the easterly right-of-way line of said Butterfield Circle, the following two courses:

North 02°05'52" East, a distance of 245.00 feet to the beginning of a curve to the right;

along the arc of said curve (Delta Angle = 90°00'00", Radius = 35.00 feet, Chord = North 47°05'52" East, 49.50 feet) a distance of 54.98 feet to the POINT OF BEGINNING and containing 1.280 acres or 55,737 Square feet of land.

Prepared By:
FAUGHT & ASSOCIATES INC.
El Paso, Texas
May 3, 1985
Job No. 5010-45





EXHIBIT

A

Paugh & Associates Inc.
Consulting Engineers

1651 Montana Ave.
El Paso, Texas 79902
(915) 542-4800

PORTION OF LOT 1, BLOCK 10
BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT TWO
CITY OF EL PASO EL PASO COUNTY, TEXAS

Drawn By
M.C.

Date
5-3-85

Scale
1" = 50'

Job No.
W.O. No. 5010-45